

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

**FOREMOST FARMS USA,
COOPERATIVE**

Plaintiff,

v.

DAIRY FARMERS OF AMERICA, INC.

Defendant.

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Case No. 3:20-CV-911

DECLARATION OF TIMOTHY J. DAVIS

I, Timothy J. Davis, declare as follows:

1. I am a partner in the law firm of Bryan Cave Leighton Paisner LLP, and I am counsel to defendant Dairy Farmers of America, Inc. (“**DFA**”) in connection with its dispute with plaintiff Foremost Farms USA, Cooperative (“**Foremost**”). The facts in this declaration are based on my personal knowledge, and I am competent to testify to them if called upon to do so.

2. On August 14, 2020, on behalf of DFA, I sent a demand letter to Foremost’s outside counsel, demanding that Foremost rectify its breaches of contract, and making clear that DFA would resort to litigation if Foremost did not rectify its breaches.

3. On September 4, 2020, Foremost, through outside counsel, responded in writing to DFA’s August 14, 2020 demand letter, claiming that the Covid-19 pandemic excused Foremost’s performance under the contracts.

4. I spoke with Foremost’s outside counsel on September 15, 2020, at which point Foremost’s counsel indicated that it was interested in exploring some sort of out-of-court resolution to the parties’ dispute, and that Foremost had no desire to engage in litigation.

5. Counsel for the parties spoke again on September 21, 2020, at which point I conveyed that DFA was interested in being made whole in the near term, and that DFA may well

feel compelled to institute legal action by October 2, 2020 if Foremost did not present a meaningful proposal about possible resolution.

6. I then spoke once again with Foremost's outside counsel on September 23, 2020; Foremost's counsel once again indicated that Foremost did not want to litigate, but that Foremost was not interested in negotiating a potential resolution under pressure. During the September 23 teleconference, Foremost's counsel said nothing about instituting a litigation of its own, and, to the contrary, conveyed that Foremost had no interest in litigation.

7. Thereafter, without any advance notice to DFA, Foremost instituted the above-captioned declaratory-judgment lawsuit on September 30, 2020 (two days before DFA indicated it would take legal action).

8. Two days later, on October 2, as it said it would, DFA filed its lawsuit for breach of contract in the District of Kansas. (*See* Case No. 2:20-cv-02490-JAR-GEB, pending in the United States District Court for the District of Kansas.)

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 19, 2020.

A handwritten signature in black ink, appearing to read "T. J. D.", is written above a horizontal line.